

IN THE COURT OF APPEALS OF IOWA

No. 3-1164 / 13-0458
Filed January 23, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONALD JAMES GASAWAY JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Robert J. Richter, District Associate Judge.

Ronald Gasaway Jr. appeals his sentences, claiming the sentencing court did not state its reasons for the imposition of consecutive sentences. **AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Triick, Assistant Attorney General, Ralph Potter, County Attorney, and Alicia Stach, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

McDONALD, J.

Ronald J. Gasaway Jr. pleaded guilty to five aggravated misdemeanors: one count of domestic assault causing injury, as a second offender, in violation of Iowa Code section 708.2A(3)(b) (2011); and four counts of interference with official acts, causing injury, in violation of Iowa Code section 719.1(1). The five counts all arise out of an incident in which Gasaway physically assaulted his wife and then injured several peace officers while resisting arrest. The court sentenced Gasaway to two years' incarceration on each count, with said sentences to run consecutive to each other for a total term of incarceration not to exceed ten years. Gasaway appeals the court's sentence, arguing that the court did not state its reasons for the imposition of consecutive sentences.

"[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). An abuse of discretion occurs if "the decision was exercised on grounds or for reasons that were clearly untenable or unreasonable." *Id.* In imposing sentence, "[t]he court shall state on the record its reason for selecting the particular sentence." Iowa R. Crim. P. 2.23(3)(d). The reason stated does not need to be detailed, but "at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action." *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). "The trial court generally has discretion to impose concurrent or consecutive sentences for convictions on separate counts." *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). "Consequently, the duty of a sentencing court to

provide an explanation for a sentence includes the reasons for imposing consecutive sentences.” *Id.* “The reasons, however, are not required to be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed for the overall sentencing plan.” *Id.* “Thus, we look to all parts of the record to find the supporting reasons.” *Id.*

Following Gasaway’s guilty plea, the court ordered that a presentence investigation report be prepared and set a sentencing hearing. At the sentencing hearing, two law enforcement officers provided victim impact statements regarding the injuries they sustained apprehending Gasaway. The victims requested incarceration and consecutive sentences. The State also argued for consecutive sentences. Gasaway’s counsel argued for probation and placement at the Elm Street Correctional Facility for one year or until maximum benefits were received as an additional term and condition of probation. The court listened to the victim impact statements, the arguments of counsel, and Gasaway’s statement and then pronounced sentence:

THE COURT: Thank you. Please have a seat. Mr. Gasaway, there’s several things that I take into account when making a decision about sentencing and I’ve taken those into consideration in your case. The first is your age, and I understand that at your age you still have a lot of life in front of you and that the—the need for rehabilitation is certainly important in this case. Your history, which is another factor I take into account, your criminal history does suggest that for whatever reason you haven’t been deterred from your behavior. You served a 330-day jail sentence back in 2010. Apparently that didn’t work either.

I also take into consideration your family situation. I understand that you want to have contact with your wife and you want to get a job as well. I take into—your employment situation as well into account and I understand you have had employment at Miracle Car Wash since 2009.

When I factor those things together, you might be in a situation where you could get the Elm Street facility, but there's also other things I take into consideration and that is the harm to the victims. In this case there was significant harm to the people that you affected. There's no doubt in my mind that what you did was intentional whether or not you remember it because of your condition or those things, but everything that I've heard here today does lead me to believe that you made conscious decisions during your interactions with law enforcement that led to their injuries, and they were significant injuries. I'm taking into account what they said about the fact that they are individuals that have a family life outside of their employment, and just because they take on a dangerous job doesn't mean you have the right to harm them in any way.

And then finally the deterrence issue. You need to understand that what you did was wrong. It was very wrong. People are affected every day by criminal behavior and I haven't even mentioned yet the harm that you've inflicted upon your wife. They come to the scene of the incident and they hear a disturbance that makes other bystanders believe that someone is in danger and serious danger.

Ms. Gasaway, through your attorney, has apparently asserted that it was out of character for you, that she never saw you like this before. However, from reviewing the Court file that was presented today, you've harassed Jessica Harry, another individual in the past, and that's presented to me today and you received a 330-day jail sentence so it doesn't really seem to be out of character, but you pled in that case as well and I take that into consideration.

I am going to require that you pay restitution in the amount of \$35.88 because that was the amount that was presented in the restitution of pecuniary damage statement. I understand there were different amounts that were asserted by Lieutenant Radloff of \$77 and \$94 but I'm going to just impose the amount that was asked for in the filing of \$35.88.

And, Mr. Gasaway, I am going to require that you serve all the sentences of two years in prison consecutively. I'm going to require that you serve that sentence immediately; that there will be a fine of \$625 on each case, imposed, and you're going to be required to complete the Batterer's Education Program as a condition of sentence. This is a final judgment. You do have the right to appeal. You need to appeal within 30 days. The bond on appeal is \$25,000, cash only.

The State argues that the sentence should be affirmed on the ground that the district court's overall explanation set forth a sentencing plan that meets the

requirements of rule 2.23(3)(d) as discussed in *State v. Hennings*, 791 N.W.2d 828 (Iowa 2010). We disagree. The sentencing court's statements seemed to be focused on the determination of whether to grant probation or impose a term of incarceration, stating that certain factors placed Gasaway "in a situation where [he] could get the Elm Street facility [as a term and condition of probation], but there's also other things [the sentencing court takes] consideration and that is the harm to the victims." Thus, while the sentencing court identified its reasons for selecting a term of incarceration versus probation, it did not state whether those reasons were also the same reasons supporting its decision to impose consecutive versus concurrent sentences or some combination of consecutive versus concurrent sentences. No additional reasons can be gleaned from the judgment and sentencing orders, which state only that the sentences "shall be served consecutive" without identifying any reason for the same. While the reasons the court chose to impose consecutive sentences may, in fact, be the same reasons supporting its decision to impose a term of incarceration versus probation, we are unable to determine that from this record.

This case is thus distinguishable from *Hennings*. In that case, the sentencing court discussed in great detail the reasons for its sentence, as did the sentencing court in this case. In *Hennings*, however, the sentencing court imposed consecutive sentences after stating "with all those things in mind." *Hennings*, 791 N.W.2d at 838. The sentencing court in *Hennings* thus clearly stated that the same reasons supporting its decision to impose a term of incarceration also supported its decision to impose consecutive sentences. The sentencing hearing in this case is more similar to the sentencing hearing in *State*

v. Jason, 779 N.W.2d 66 (Iowa Ct. App. 2009). In that case, the court articulated a variety of factors it considered in imposing sentence, but then failed to articulate whether those same factors related to its decision to impose consecutive sentences. See *Jason*, 779 N.W.2d at 77. The *Jason* court reasoned and held:

The district court provided sufficient reasons to support its decision to impose a term of incarceration. It cited the nature of the offenses, their ongoing nature, and the continuing course of conduct by Jason. However, the court did not provide any reasons for its decision to impose consecutive sentences Although the reasons given for imposing consecutive sentences may be the same reasons for granting probation, reasons must be identified. Here, the trial court provided no explanation for the imposition of consecutive sentences during the sentencing hearing or in the sentencing order. Since the trial court gave sufficient reasons for imposing incarceration, we vacate only that portion of the sentence imposing consecutive sentences and remand for the purpose of determining whether the sentences should run consecutive or concurrent.

Id. (internal citations omitted).

Jason is consistent with other cases requiring that the sentencing court state its reasons for imposing consecutive sentences in addition to its general statement of reasons supporting a term of incarceration. See, e.g., *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000) (explaining that court's statements regarding the nature of the offense, the harm caused to the victims, and the "cold and calculated" nature of the crime were "sufficient reasons to support its decision to impose a term of incarceration . . . [h]owever, the court did not provide reasons for its decision to impose consecutive sentences"); *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998) (holding that imposition of consecutive sentences without explanation of reasons was not sufficient under Rule

2.23(3)(d)); *State v. Uthe*, 542 N.W.2d 810, 816 (Iowa 1996) (holding that stated reasons for refusal to grant probation were not a sufficient explanation of why the sentencing court imposed consecutive sentences); *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994) (vacating sentence where the sentencing court's reasons related solely to the denial of probation and stating that "more is required to enable us to properly perform our review").

Clearly articulating the reasons supporting the imposition of consecutive sentences is particularly important under the facts and circumstances of this case. The sentencing court had the responsibility to exercise its discretion to consider all sentencing options available to it. In this case, that discretion included a variety of combinations of concurrent and/or consecutive sentences. The total length of incarceration in this case could have been a term not more than two years, four years, six years, eight years, or ten years, all dependent upon the court's exercise of its discretion in imposing a combination of concurrent versus consecutive sentences. The court's reasons for declining to grant probation and correctional facility placement and to instead require a period of incarceration clearly demonstrate its exercise of discretion to that point. The record does not, however, demonstrate the factors the court considered in selecting a sentence of ten years versus eight years, six years, four years, or two years. See Iowa Code § 901.5 (requiring the court to exercise its discretion as to which sentencing option or combination will provide maximum opportunity for rehabilitation and protection of the community.).

Here, as in *Jason*, "[s]ince the trial court gave sufficient reasons for imposing incarceration, we vacate only that portion of the sentence imposing

consecutive sentences and remand for the purpose of determining whether the sentences should run consecutive or concurrent.” *Jason*, 779 N.W.2d at 77.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR RESENTENCING.

Mullins, J., concurs; Vogel, P.J., dissents.

VOGEL, P.J. (dissenting)

I must respectfully dissent from the majority's decision to vacate and remand this case for resentencing. I find the trial court's reasons for imposing consecutive sentences on each of the five counts can be found not only in its stated reasoning, but also in its overall sentencing plan. *Hennings*, 791 N.W.2d at 838–39. The reasons for the sentence do not need to be detailed and may even be terse and succinct, so long as it allows for appellate review of the discretionary action. *Id.* at 838. On this record, the sentencing court's reasons are clear, allowing an unhindered appellate review.

The court here, as did the court in *Hennings*, spoke at length about the information it considered in sentencing Gasaway. Of particular importance to the sentencing court were the significant injuries the law enforcement officers sustained along with the fact that the officers were individuals with a life outside of their employment. See *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (noting that the court imposed consecutive sentences in part based on the fact that two separate crimes were committed against two different victims). Gasaway requested his sentences not run consecutive to each other, but the court placed emphasis on the fact that this was not Gasaway's first offense. Gasaway had not learned his lesson after nearly a year in jail for the prior offense of harassment, and thus, the need to deter Gasaway from similar conduct in the future was a justification the court used to impose the maximum term of incarceration—ten years. See *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003) (noting the trial court did not abuse its discretion by imposing consecutive

sentences where the defendant engaged in similar behavior in two separate cases).

Even more informative is the district court's reasoning towards the end of the colloquy: "I am going to require that you serve all the sentences of two years in prison consecutively." This statement is an unequivocal averment the court was fully aware of the many options available and concluded the sentences should run consecutive to each other. *Hennings*, 791 N.W.2d at 838–39 (finding the sentencing court's statements did not leave the impression the court mistakenly believed consecutive sentences were mandatory and the reasons for imposing consecutive sentences could be found "as part of an overall sentencing plan").

Because the reasons for imposing consecutive sentences were well discerned from the court's statements as well as in the overall sentencing plan, I would affirm Gasaway's sentence.